



PRELIMINARY DRAFT

No. 3561

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2006 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-34-6-4; IC 36-2-13-5; IC 36-3-1-5.1;
IC 36-8-10-9.

Synopsis: Marion County small claims court constables. Requires the constable of a Marion County small claims court (instead of the sheriff) to serve the summons, subpoenas, orders, pleadings, papers related to discovery, motions, notices, appearances, and other papers of the superior and circuit court, except for protective orders, orders of possession of real or personal property, process in real estate mortgage foreclosure actions, and papers that the sheriff is required by statute to serve.

Effective: July 1, 2006.



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 33-34-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The voters of each township having a small claims court shall elect a constable for the small claims court at the general election every four (4) years for a term of office of four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified. The ballot must state the:

- (1) name of the candidate; and
- (2) court for which the candidate is to serve.

(b) Each small claims court shall have a constable who:

- (1) acts as the bailiff of the court;
- (2) serves the court's personal service of process;
- (3) serves the summonses, subpoenas, orders, pleadings, papers related to discovery, motions, notices, appearances, and other papers of the superior and circuit court of the county, except for:**

- (A) a protective order (as defined in IC 5-2-9-2.1);**
- (B) an order of possession of real or personal property;**
- (C) process in a real estate mortgage foreclosure action;**
- and**
- (D) any other papers the sheriff is required by statute to serve.**

~~(3)~~ **(4)** has police powers to:

- (A) make arrests;
- (B) keep the peace; and
- (C) carry out the orders of the court;

~~(4)~~ **(5)** must meet the qualifications prescribed by IC 3-8-1-31;

~~(5)~~ **(6)** is compensated for each process that is delivered to effect personal service when serving as the:

- (A) bailiff for the court; or**
- (B) civil process server for the superior and circuit courts**



- 1 **of the county under subdivision (3);**
 2 ~~(6)~~ (7) is responsible for:
 3 (A) the preparation and mailing of all registered or certified
 4 service and is compensated for each process served by mail;
 5 and
 6 (B) all the official acts of the deputies;
 7 ~~(7)~~ (8) is compensated solely from the service of process fees
 8 collected under IC 33-34-8-1; and
 9 ~~(8)~~ (9) may require a deputy to give a bond for the proper
 10 discharge of the deputy's duties for an amount fixed by the
 11 constable.
 12 (c) The elected constable may appoint full-time and part-time
 13 deputies for assistance in the performance of official duties who:
 14 (1) perform all the official duties required to be performed by the
 15 constable;
 16 (2) possess the same statutory and common law powers and
 17 authority as the constable;
 18 (3) must take the same oath required of the constable;
 19 (4) are compensated solely from the service of process fees
 20 collected under IC 33-34-8-1; and
 21 (5) serve at the pleasure of the constable and may be dismissed at
 22 any time with or without cause.
 23 (d) If there is an:
 24 (1) emergency; or
 25 (2) inability of a constable to carry out the constable's duties;
 26 the judge may appoint a special constable to carry out the duties of the
 27 constable during the emergency or inability.
 28 SECTION 2. IC 36-2-13-5 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) **Except as**
 30 **provided in subsection (b), the sheriff shall do the following:**
 31 (1) Arrest without process persons who commit an offense within
 32 the sheriff's view, take them before a court of the county having
 33 jurisdiction, and detain them in custody until the cause of the
 34 arrest has been investigated.
 35 (2) Suppress breaches of the peace, calling the power of the
 36 county to the sheriff's aid if necessary.
 37 (3) Pursue and jail felons.
 38 (4) Execute all process directed to the sheriff by legal authority.
 39 (5) Serve all process directed to the sheriff from a court ~~or~~ the
 40 county executive.
 41 (6) Attend and preserve order in all courts of the county.
 42 (7) Take care of the county jail and the prisoners there.
 43 (8) Take photographs, fingerprints, and other identification data
 44 as the sheriff shall prescribe of persons taken into custody for
 45 felonies or misdemeanors. ~~and~~
 46 (9) On or before January 31 and June 30 of each year, provide to



the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.

(b) This subsection applies only to a county having a consolidated city. The sheriff shall serve the civil process of the superior or circuit court of the county that is not served by a constable under IC 33-34-6-4.

~~(b)~~ (c) A person who:

- (1) refuses to be photographed;
- (2) refuses to be fingerprinted;
- (3) withholds information; or
- (4) gives false information;

as prescribed in subsection (a)(8), commits a Class C misdemeanor.

SECTION 3. IC 36-3-1-5.1, AS ADDED BY P.L.227-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.1. (a) Except for those duties that are reserved by law to the county sheriff in this section, the city-county legislative body may by majority vote adopt an ordinance, approved by the mayor, to consolidate the police department of the consolidated city and the county sheriff's department.

(b) The city-county legislative body may not adopt an ordinance under this section unless it first:

- (1) holds a public hearing on the proposed consolidation; and
- (2) determines that:
 - (A) reasonable and adequate police protection can be provided through the consolidation; and
 - (B) the consolidation is in the public interest.

(c) If an ordinance is adopted under this section, the consolidation shall take effect on the date specified in the ordinance.

(d) Notwithstanding any other law, an ordinance adopted under this section must provide that the county sheriff's department shall be responsible for all the following for the consolidated city and the county under the direction and control of the sheriff:

- (1) County jail operations and facilities.
- (2) Emergency communications.
- (3) Security for buildings and property owned by:
 - (A) the consolidated city;
 - (B) the county; or
 - (C) both the consolidated city and county.
- (4) Service of civil process ~~and that is not served by a constable under IC 33-34-6-4.~~
- (5) Collection of taxes under tax warrants.

~~(5)~~ (6) Sex offender registration.

(e) The following apply if an ordinance is adopted under this section:



(1) The department of local government finance, on recommendation from the local government tax control board, shall adjust the maximum permissible ad valorem property tax levy of the consolidated city and the county for property taxes first due and payable in the year a consolidation takes effect under this section. When added together, the adjustments under this subdivision must total zero (0).

(2) The ordinance must specify which law enforcement officers of the police department and which law enforcement officers of the county sheriff's department shall be law enforcement officers of the consolidated law enforcement department.

(3) The ordinance may not prohibit the providing of law enforcement services for an excluded city under an interlocal agreement under IC 36-1-7.

(4) A member of the county police force who:

(A) was an employee beneficiary of the sheriff's pension trust before the consolidation of the law enforcement departments; and

(B) after the consolidation becomes a law enforcement officer of the consolidated law enforcement department;

remains an employee beneficiary of the sheriff's pension trust. The member retains, after the consolidation, credit in the sheriff's pension trust for service earned while a member of the county police force and continues to earn service credit in the sheriff's pension trust as a member of the consolidated law enforcement department for purposes of determining the member's benefits from the sheriff's pension trust.

(5) A member of the police department of the consolidated city who:

(A) was a member of the 1953 fund or the 1977 fund before the consolidation of the law enforcement departments; and

(B) after the consolidation becomes a law enforcement officer of the consolidated law enforcement department;

remains a member of the 1953 fund or the 1977 fund. The member retains, after the consolidation, credit in the 1953 fund or the 1977 fund for service earned while a member of the police department of the consolidated city and continues to earn service credit in the 1953 fund or the 1977 fund as a member of the consolidated law enforcement department for purposes of determining the member's benefits from the 1953 fund or the 1977 fund.

(6) The ordinance must designate the merit system that shall apply to the law enforcement officers of the consolidated law enforcement department.

(7) The ordinance must designate who shall serve as a coapplicant for a warrant or an extension of a warrant under IC 35-33.5-2.



(8) The consolidated city may levy property taxes within the consolidated city's maximum permissible ad valorem property tax levy limit to provide for the payment of the expenses for the operation of the consolidated law enforcement department. The police special service district established under IC 36-3-1-6 may levy property taxes to provide for the payment of expenses for the operation of the consolidated law enforcement department within the territory of the police special service district. Property taxes to fund the pension obligation under IC 36-8-7.5 may be levied only by the police special service district within the police special service district. The consolidated city may not levy property taxes to fund the pension obligation under IC 36-8-7.5. Property taxes to fund the pension obligation under IC 36-8-8 for members of the 1977 police officers' and firefighters pension and disability fund who were members of the police department of the consolidated city on the effective date of the consolidation may be levied only by the police special service district within the police special service district. Property taxes to fund the pension obligation under IC 36-8-8 for members of the sheriff's pension trust and members of the 1977 police officers' and firefighters pension and disability fund who were not members of the police department of the consolidated city on the effective date of the consolidation may be levied by the consolidated city within the consolidated city's maximum permissible ad valorem property tax levy. The assets of the consolidated city's 1953 fund and the assets of the sheriff's pension trust may not be pledged after the effective date of the consolidation as collateral for any loan.

(9) The executive of the consolidated city shall provide for an independent evaluation and performance audit, due before March 1 of the year following the adoption of the consolidation ordinance and for the following two (2) years, to determine:

(A) the amount of any cost savings, operational efficiencies, or improved service levels; and

(B) any tax shifts among taxpayers;

that result from the consolidation. The independent evaluation and performance audit must be provided to the legislative council in an electronic format under IC 5-14-6 and to the state budget committee.

SECTION 4. IC 36-8-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) **Except as provided in subsection (b),** each member of the department:

(1) has general police powers;

(2) shall arrest, without process, all persons who commit an offense within ~~his~~ **the member's** view, take them before the court having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;



(3) shall suppress all breaches of the peace within ~~his~~ **the member's** knowledge, with authority to call to ~~his~~ **the member's** aid the power of the county;

(4) shall pursue and commit to the jail of the county all felons;

(5) may execute all process directed to the sheriff by legal authority;

(6) shall attend upon and preserve order in all courts of the county;

(7) shall guard prisoners in the county jail;

(8) shall serve all process directed to the sheriff from a court or from the county executive according to law; and

(9) shall take photographs, fingerprints, and other identification data as shall be prescribed by the sheriff of persons taken into custody for felonies or misdemeanors.

(b) This subsection applies only to a county having a consolidated city. The sheriff shall serve the civil process of the superior or circuit court of the county that is not served by a constable under IC 33-34-6-4.

~~(b)~~ (c) A person who:

(1) refuses to be photographed;

(2) refuses to be fingerprinted;

(3) withholds information; or

(4) gives false information;

as prescribed in subsection (a)(9), commits a Class C misdemeanor.

